TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 930.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

BURTON M. FORD, WALTER W. OLIVER, AND JAMES CONNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 21, 1878.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Monday the thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and third.

WILLIAM H. BRADLEY, *Clerk.*

THE UNITED STATES OF AMERICA
v.
BURTON M. FORD, WALTER W. OLIVER, AND James Conner. } Debt.

NORTHERN DISTICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-first day of September, A. D. 1875, came the said plaintiff, the United States of America, by J. D. Ward, attorney of the United States of America for said northern district of Illinois, and filed in the office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago,
2 in the district aforesaid, his præcipe for a writ of summons against said defendants in said entitled cause, which said præcipe is in the words and figures following, to wit:

Præcipe.

Circuit court of the United States of America for the northern district of Illinois.

THE UNITED STATES OF AMERICA
vs.
BURTON M. FORD, WALTER W. OLIVER, JAMES Conner.

In an action of debt. Debt, $5,000; dam., $5,000.

The clerk will please issue a summons in the above case, returnable to October term of said court, A. D. 1875.

J. D. WARD,
Attorney of the United States for the Northern District of Illinois.

(Endorsed:) Filed Sept. 21st, 1875. W'm H. Bradley, cl'k.

And on the same day, to wit, the 21st day of September, A. D. 1875, a writ of summons issued out of said clerk's office against said defendants in said entitled cause, which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

3 *Writ of summons.*

Circuit court of the United States of America.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Burton M. Ford, Walter W. Oliver, and James Conner, if found in your district, to be and appear before our

judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago in the district aforesaid, on the first Monday of October next, to answer unto the United States of America in a plea of debt of five thousand dollars, and for the detention of said debt to their damage, as they allege, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 100th
4 year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

I have served the within writ by reading the same to and within the presence and hearing of Burton M. Ford, Sept. 22d, 1875, and James Conner, therein named, on the 2d day of October, 1875.

B. H. CAMPBELL;
U. S. Marshal,
By I. N. BUCK,
Deputy.

I did not serve the within writ upon Walter W. Oliver, being unable to find him within my district.

Dated Oct. 2d, 1875.

B. H. CAMPBELL,
U. S. Marshal,
By I. N. BUCK, *Dep'ty.*

(Endorsed:) Filed Nov. 6th, A. D. 1875. W'm H. Bradley, clerk.

Afterwards, to wit, on the 24th day of September, A. D. 1875, said plaintiff, by its attorney, filed in said clerk's office its declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

Circuit court of the United States of America for the northern
5 district of Illinois, of the October term of said court, in the year of our Lord one thousand eight hundred and seventy-five.

The United States of America, plaintiffs in this suit, by J. D. Ward, the attorney of the United States for the northern district of Illinois, complain of Burton M. Ford, Walter W. Oliver, and James Conner, partners under the name and style of B. M. Ford, Oliver and Co., defendants in this suit, of a plea that the said defendants render unto the said plaintiffs the sum of five thousand dollars, lawful money of the said United States, which the said defendants owe to and unjustly detain from said plaintiffs.

For that whereas the said defendants heretofore, to wit, on or about the 1st day of January, in the year of our Lord one thousand eight hundred and seventy-four, and on divers days and times between that day and the commencement of this suit, to wit, in the county of Cook, in the State of Illinois, and in the northern district of Illinois, aided and abetted in the removal of distilled spirits, to wit, thirty-five hundred gallons, on which taxes were and are imposed by law, but on which the taxes had not and have not been paid, to a place other than the distillery warehouse provided by law, contrary to the provisions of

6 the statute of the United States in such case made and provided, whereby and by virtue of said statute the said defendants did then and there forfeit and become liable to pay to the said plaintiffs the sum of five thousand dollars penalty, said sum being double the tax imposed on said distilled spirits so removed; and by reason of the premises and force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to have and demand of and from the said defendants the sum of five thousand dollars so forfeited as aforesaid, being the sum above demanded.

And whereas also the said defendants heretofore, to wit, on or about the 1st day of January, 1874, and on divers days and times between that day and the commencement of this suit, to wit, in the county of Cook, in the State of Illinois, and in the northern district of Illinois, concealed and aided in the concealment of a certain quantity of distilled spirits, to wit, thirty-five hundred gallons, on which taxes were and are imposed by law, but on which the taxes had not and have not been paid, which distilled spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the provisions of the statute of the United States in such case made and provided,

7 whereby and by virtue of the provisions of said statute the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of five thousand dollars penalty, said sum being double the tax imposed on said distilled spirits so removed and concealed; and by reason of the premises and by virtue of the statute in such case made and provided, an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the sum of five thousand dollars so forfeited as aforesaid, being the sum above demanded.

And whereas, also, the said defendants heretofore, to wit, on or about the 1st day of January, 1874, and on divers days and times between that day and the commencement of this suit, to wit, in the county of Cook, in the State of Illinois, and in the northern district of Illinois, removed, and aided and abetted in the removal of a certain quantity of distilled spirits, to wit, thirty-five hundred gallons, on which taxes were and are imposed by law, but on which the taxes had not and have not been paid, from a distillery-warehouse in a manner other than was and is provided by law, contrary to the provisions of the statute of the United States in such case made and provided.

8 Whereby, and by virtue of the provisions of said statute, the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of five thousand dollars penalty, said sum being double the tax imposed on said distilled spirits so removed.

And by reason of the premises, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the sum of five thousand dollars so forfeited, being the sum above demanded.

And whereas, also, the said defendants heretofore, to wit, on or about the first day of January, 1874, and on divers days and times between that day and the commencement of this suit, to wit, in the county of Cook, in the State of Illinois, and in the northern district of Illinois, had in their possession and custody goods, wares, and merchandise, articles, and objects, to wit, thirty-five hundred gallons of distilled spirits on which taxes were and are imposed by law, for the purpose of selling the same in fraud of the internal-revenue laws, and with design to avoid and fraudulently evade the payment of the taxes imposed thereon, contrary to the provisions of the statute of the United States in such case made

and provided, whereby, and by virtue of the provisions of said
9 statute, the said defendants did then and there forfeit and become liable to pay to the plaintiffs the sum of five thousand dollars penalty, said sum being double the amount of taxes fraudulently evaded and attempted to be evaded as aforesaid.

And by reason of the premises, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to demand and have of and from said defendants the sum of five thousand dollars so forfeited, being the sum above demanded. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars in the several counts above specified, or any part thereof, to the said plaintiffs, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of five thousand dollars; and therefore they bring their suit, &c.

J. D. WARD,
United States Attorney, Northern District of Illinois.

(Endorsed:) Filed Sep't 24, '75. W'm H. Bradley, cl'k.

10 Afterwards, to wit, on the 5th day of October, A. D. 1875, said defendants, by their attorney, filed in said clerk's office their demurrer to the declaration in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer to declaration.

Circuit court of the United States, northern district of Ill's.

BURTON M. FORD, WALTER W. OLIVER, AND James Conner
ads.
THE UNITED STATES, &C.

And now come the said defendants, by Sidney Smith, their attorney, and say that the said declaration and the matters therein contained are not sufficient in law, and that said defendants are not bound in law to answer the same. Wherefore they pray judgment, &c.

SIDNEY SMITH,
Att'y for Defendants.

(Endorsed:) Filed Oct. 5, 1875. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 8th day of March, A. D. 1876, said plaintiff, by its attorney, filed in said clerk's office its joinder in demurrer in said entitled cause, which said joinder is in the words and figures
11 following, to wit:

Joinder in demurrer.

In the circuit court of the United States for the northern district of Illinois. March term, 1876.

THE UNITED STATES
vs.
BURTON M. FORD AND OTHERS. } No. 12893. Debt.

And the said plaintiffs say that the said declaration and the matters therein contained, in manner and form as the same are above set forth,

are sufficient in law for them to maintain their aforesaid action, and they are ready to verify the same as the court here shall direct; wherefore, inasmuch as the said defendants have not denied the said declaration, the said plaintiffs pray judgment, etc.

MARK BANGS,
Att'y for Plaintiffs.

(Endorsed:) Filed March 8, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 11th day of October, A. D. 1876, in the adjourned October term of said court, in the record of the proceedings in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

12 THE UNITED STATES OF AMERICA
vs.
BURTON M. FORD ET AL. } Debt.

On motion of the district attorney, the defendants are hereby ruled to plead herein by Monday next.

Afterwards, to wit, on the 20th day of October, A. D. 1876, said defendants, by their attorneys, filed in said clerk's office their pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

Pleas.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court in and for the northern district of Illinois. To the October term, A. D. 1876.

THE UNITED STATES OF AMERICA
vs.
BURTON M. FORD, WALTER W. OLIVER, AND James Conner, partners under the name and style of B. M. Ford.

And the said defendants, by Sidney Smith and Leonard Swett, their attorneys, come and defend the wrong and injury, when, &c., and say that they do not, nor does either or any of them, owe the said sum
13 of money above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this the said defendants put themselves upon the country, &c.

SIDNEY SMITH AND LEONARD SWETT,
Attorneys for Defendants.

2d. And for a further plea in this behalf said defendants say actio non, because they say that heretofore, to wit, on the twenty-seventh day of December, A. D. 1875, at Chicago, at, to wit, said northern district of Illinois, the said plaintiffs and the said defendants entered into an agreement, by which it was, among other things, agreed that if the said defendants would testify on behalf of the plaintiffs frankly and truthfully when required, in reference to a conspiracy among certain govern-

ment officials in the revenue service and other parties then known to exist, whereby the honest manufacture of spirits, and payment of the tax, had been rendered practically impossible, and should plead guilty to one count in an indictment then pending against them in the district court in and for said northern district, and should withdraw their pleas in a certain condemnation case then pending against them in said district court, the said plaintiffs would recall any and all assessments under the internal-revenue law then made against said defendants,
14 and that no more assessments under said law should be made against said defendants, and that no proceedings other than said condemnation case should be prosecuted against said defendants, and that no new proceedings should be commenced against said defendants on account of transactions then past. And these defendants aver that they and each of them have fully performed said contract on their part. And defendants further aver that this suit is a proceeding other than said condemnation case, and that this suit is for the recovery upon transactions prior to the entering into said agreement, and this the said defendants are ready to verify. Wherefore, they pray judgment, &c.

SIDNEY SMITH AND LEONARD SWETT,
Attorneys for Defendants.

(Endorsed:) Filed Oct. 20, 1876. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 8th day of May, A. D. 1877, said plaintiff, by its attorney, filed in said clerk's office its similiter to the first plea and demurrer to the second plea of said defendants in said entitled cause, which said similiter and demurrer are in the words and figures
15 following, to wit:

Similiter to first plea and demurrer to second plea.

In the circuit court of the United States of America for the northern district of Illinois, May term, 1877.

THE UNITED STATES, ETC.,
vs.
BURTON M. FORD AND OTHERS. } No. 12893. Debt.

And the said plaintiffs, as to the plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, do the like.

And the said plaintiffs, as to the plea of the said defendants by them secondly above pleaded, say that the same and the matters therein contained, in manner and form, etc., are not sufficient in law to bar the said plaintiffs, etc., and that they are not bound by law to answer the same; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment, etc.

MARK BANGS,
U. S. Attorney.

(Endorsed:) Filed May 8, 1877. W'm H. Bradley, cl'k.

16 Afterwards, to wit, on the 29th day of June, A. D. 1878, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. John M. Harlan, one

of the justices of the Supreme Court of the United States, is the following entry, to wit:

THE UNITED STATES OF AMERICA
vs.
BURTON M. FORD ET AL. } Debt.

Now comes the district attorney, and come also the defendants, by their attorneys, and by agreement the demurrer of the plaintiffs to the pleas herein is submitted to the court; and the court takes the same under advisement.

And afterwards, to wit, on the 30th day of September, A. D. 1878, in the July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

THE UNITED STATES OF AMERICA
v.
BURTON M. FORD ET AL. } Debt.

The court having considered and being now sufficiently advised upon the demurrer of the plaintiffs to the pleas of the defendant, overrules the same, and, the district attorney electing to abide by said demurrer, it is thereupon ordered by the court that this cause be dismissed.

17 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein the United States of America is the plaintiff and Burton M. Ford et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 11th day of October, A. D. 1878, and of our Independence the one hundred and third year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

18 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you, in said circuit court, between the United States of America, plaintiff, and Burton M. Ford, Walter W. Oliver, and James Conner, defendants, in an action of debt, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United

States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1878, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d year.

[SEAL.] WM H. BRADLEY, *Clerk.*

19 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Burton M. Ford, Walter W. Oliver, and James Connor, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1878, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the United States of America are plaintiffs and Burton M. Ford, Walter W. Oliver, and James Connor, defendants, to show cause, if any there be, why the errors in said writ mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 10th day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

H. W. BLODGETT, *Judge.*

20 I hereby accept service of the within writ of citation and enter the appearance of the within-named Burton M. Ford, Walter W. Oliver, and James Connor, defendants.

Chicago, Oct. 10, 1878.

CHAS. H. REED &
EDMUND JUSSEN,
Att'ys for Claimants.

(Indorsed:) 888. Supreme Court of the United States. The United States of America vs. Burton M. Ford et al. Citation to October term, A. D. 1878.

I have served the within writ of citation upon Charles H. Reed, attorney of record for the within-named defendants, Burton M. Ford, Walter W. Oliver, and James Conner, by personally delivering a true copy of the same to said Reed this 10 day of October, A. D. 1878. I also served the same upon Edward Jussen, an attorney, by reading the same to him this 10 day of October, A. D. 1878.

J. S. HILDRUP,
U. S. Marshal.
D. D. SABIN, *Deputy.*

Marshal's fees: 2 services, 4.00.

(Indorsement on cover:) No. 930. The United States, plaintiff in error, vs. Burton M. Ford, Walter W. Oliver, and James Conner. N. Illinois C. C. U. S. Filed 21st October, 1878.